IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.359 OF 2006

Shri Harilal Savji Patel(H.U.F.) ...Petitioner

V/s.

M/s.Choice Centre & Ors. ...Respondents

CORAM : D.K. DESHMUKH, J.
DATED : 29/08/2006

P.C.:-

1. Heard the learned counsel for the parties.

2. In my view, following points can be taken as settled from the documents on record.

i) that H.S.Patel was partner of the respondent No.1;

ii) that partnership is at will;

iii) that the petitioner has dissolved the firm;

iv) that the firm was carrying on business under the name 'M/s.Choice Centre'.

3. There is a dispute between the parties whether presently the firm is carrying on business. There is also dispute between the parties whether the premises

where firm is carrying on business has been surrendered to the landlord or not. Petitioner, who is one of the partners, contends that there is no surrender of premises of the firm. He has not given any consent for surrender of premises of the firm.

4. A perusal of the partnership deed on record does not show that any one of the partners has been given any authority to deal with the property on behalf of the firm without other partners joining. It appears that other partners of the firm, in order to create difficulty in the way of the petitioner, have entered into the transaction. Therefore, in my view, considering that the partnership is at will and it has been dissolved, it is appropriate to appoint a receiver on the business of the firm. Respondent No.6, who is a partner of the firm, says that S.A.Patel was given licence of the furniture of the firm. There is no dispute that S.A.Patel is a son of the respondent No.5 who has signed the documents on behalf of the firm. It appears that any transactions that have been entered into on behalf of the firm i.e. respondent No.6 are invalid and without authority because there does not appear any clause in the partnership deed which

authorizes any one partner to deal with the property. In these circumstances, in my view, following order would meet the ends of justice:-.

1. By consent of parties Hon'ble Mr.Justice V.P. Tipnis(Retired) having address at 201/A, “Prachi” Juhu Versova Link Road, Andheri(W), Mumbai:400 053 is appointed as Sole Arbitrator and dispute between parties are referred to the learned Arbitrator.

2. Receiver of this Court is appointed as receiver of the business of respondent No.1 firm. Receiver shall take possession of the business and assets of the firm from whomsoever it may be in possession. Receiver shall, thereafter, call bids for appointment of agent of the receiver for carrying on business of the firm. Highest bidder shall be appointed as an Agent. Parties shall be at liberty to apply for interim relief before the learned Arbitrator.

5. The petition is disposed of.

(D.K. DESHMUKH, J.)